

Senate Bill 500

By: Senator Wiles of the 37th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 6 of Title 43 of the Official Code of Georgia Annotated, relating to auctioneers, so as to provide a maximum amount for the auctioneers education, research, and recovery fund; to provide for the disposition of excess fund amounts; to provide for the collection of fees and assessments for such fund under certain circumstances; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 6 of Title 43 of the Official Code of Georgia Annotated, relating to auctioneers, is amended by revising Code Section 43-6-22.1, relating to the auctioneers education, research, and recovery fund, as follows:

"43-6-22.1.

(a) The commission is authorized and directed to establish and maintain an auctioneers education, research, and recovery fund.

(b) ~~The~~ Effective July 1, 2010, the commission shall maintain a ~~minimum~~ maximum balance of \$100,000.00 in the auctioneers education, research, and recovery fund. Any funds in excess of \$100,000.00 in the fund on July 1, 2010, shall be transferred to the general fund of the state treasury. ~~from which any~~ Any person, except bonding companies when they are not principals in an auction transaction, aggrieved by an act, representation, transaction, or conduct of a licensee which is in violation of this chapter or of the rules and regulations of the commission promulgated pursuant to this chapter, may recover from such fund, by order of any court having competent jurisdiction, actual or compensatory damages, not including interests and costs sustained by the act, representation, transaction, or conduct, provided that nothing shall be construed to obligate the fund for more than \$10,000.00 per transaction regardless of the number of persons aggrieved or parcels of real estate or lots of personal property involved in such transaction. In addition:

(1) The liability of the fund for the acts of a licensee, when acting as such, ~~is~~ shall be terminated upon the issuance of court orders authorizing payments from the fund for judgments, or any unsatisfied portion of judgments, in an aggregate amount of \$20,000.00 on behalf of such licensee;

(2) A licensee acting as a principal or agent in an auction transaction ~~has~~ shall have no claim against the fund; and

(3) No person who establishes a proper claim or claims under this Code section shall ever obtain more than \$10,000.00 from the fund.

(c) When any person makes application for an original license to practice as a licensee, that person shall pay, in addition to the original license fee, a fee in an amount established by the commission for deposit in the auctioneers education, research, and recovery fund.

(d)(1) No action for a judgment which subsequently results in an order for collection from the auctioneers education, research, and recovery fund shall be started later than two years from the accrual of the cause of action thereon. When any aggrieved person commences action for a judgment which may result in collection from the auctioneers education, research, and recovery fund, the aggrieved person shall notify the commission in writing, by certified mail or statutory overnight delivery, return receipt requested, to this effect at the time of the commencement of such action. The commission shall have the right to intervene in and defend any such action.

(2) When any aggrieved person recovers a valid judgment in any court of competent jurisdiction against any licensee under this chapter for any act, representation, transaction, or conduct which is in violation of this chapter or of the regulations promulgated pursuant to this chapter, or which is in violation of Chapter 47 of this title or of the regulations promulgated pursuant to Chapter 47 of this title, which act occurred on or after January 1, 1992, the aggrieved person may, upon termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon ten days' written notice to the commission, may apply to the court for an order directing payment out of the auctioneers education, research, and recovery fund of the amount unpaid upon the judgment, subject to the limitations stated in this Code section.

(3) The court shall proceed upon such application in a summary manner and, upon the hearing thereof, the aggrieved person shall be required to show:

(A) That he or she is not a spouse of the judgment debtor or the personal representative of such spouse;

(B) That he or she has complied with all the requirements of this Code section;

(C) That he or she has obtained a judgment, as set out in paragraph (2) of this subsection, stating the amount thereof and the amount owing thereon at the date of the

application; and that, in such action, he or she had joined any and all bonding companies which issued corporate surety bonds to the judgment debtors as principals and all other necessary parties;

(D) That he or she has caused to be issued a writ of execution upon such judgment, and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found or that the amount realized on the sale of them or of such of them as were found, under such execution, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due to the judgment after application thereon of the amount realized;

(E) That he or she has caused the judgment debtor to make discovery under oath concerning his or her property, in accordance with Chapter 11 of Title 9, the 'Georgia Civil Practice Act';

(F) That he or she has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment;

(G) That by such search he or she has discovered no personal or real property or other assets liable to be sold or applied or that he or she has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied and that he or she has taken all necessary action and proceedings for the realization thereof and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized; and

(H) That the following items, if any, as recovered by him or her have been applied to the actual or compensatory damages awarded by the court:

(i) Any amount recovered from the judgment debtor or debtors;

(ii) Any amount recovered from the bonding company or companies; or

(iii) Any amount recovered in out-of-court settlements as to particular defendants.

(4) Whenever the aggrieved person satisfies the court that it is not practical to comply with one or more of the requirements enumerated in subparagraphs (D), (E), (F), (G), and (H) of paragraph (3) of this subsection and that the aggrieved person has taken all reasonable steps to collect the amount of the judgment or the unsatisfied part thereof and has been unable to collect the same, the court may, in its discretion, dispense with the necessity for complying with such requirements.

(5) The court shall make an order directed to the commission requiring payment from the auctioneers education, research, and recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the

limitations contained in this Code section, if the court is satisfied, upon the hearing, of the truth of all matters required to be shown by the aggrieved person by paragraph (3) of this subsection and is satisfied that the aggrieved person has fully pursued and exhausted all remedies available to him for recovering the amount awarded by the judgment of the court.

(6) Should the commission pay from the auctioneers education, research, and recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, the license of such licensee shall be automatically revoked upon the issuance of a court order authorizing payment from the auctioneers education, research, and recovery fund. If such license is that of a corporation, limited liability company, or partnership, the license of the supervising auctioneer of the corporation, limited liability company, or partnership shall automatically be revoked upon the issuance of a court order authorizing payment from the auctioneers education, research, and recovery fund. No such licensee shall be eligible to receive a new license until such licensee has repaid in full, plus interest at the rate of 6 percent per annum, the amount paid from the auctioneers education, research, and recovery fund on such licensee's account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

(7) If, at any time, the money deposited in the auctioneers education, research, and recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the auctioneers education, research, and recovery fund, satisfy such unpaid claims or portions thereof in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of 4 percent per annum.

(e) The sums received by the commission pursuant to any provisions of this Code section shall be deposited into the state treasury and held in a special fund to be known as the 'auctioneers education, research, and recovery fund' and shall be held by the commission in trust for carrying out the purposes of this Code section. These funds may be invested in any investments which are legal for domestic insurance companies under Articles 1 and 3 of Chapter 11 of Title 33, and the interest from these investments shall be deposited to the credit of the auctioneers education, research, and recovery fund and shall be available for the same purposes as all other money deposited in the auctioneers education, research, and recovery fund.

(f) It shall be unlawful for any person or his or her agent to file with the commission any notice, statement, or other document required under this Code section which is false, untrue, or contains any material misstatement of fact, and any such filing shall constitute a misdemeanor.

(g) When the commission receives notice, as provided in subsection (d) of this Code section, the commission may enter an appearance, file an answer, appear at the court hearing, defend the action, or take whatever other action it may deem appropriate on behalf of and in the name of the defendant and take recourse through any appropriate method of review on behalf of and in the name of the defendant.

(h) When, upon the order of the court, the commission has paid from the auctioneers education, research, and recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor. The judgment creditor shall assign all his or her right, title, and interest in the judgment to the commission before any payment is made from the fund, and any amount and interest so recovered by the commission on the judgment shall be deposited in the fund. If the total amount collected on the judgment by the commission exceeds the amount paid from the fund to the original judgment creditor plus interest and the cost of collection, the commission may elect to pay any overage collected to the original judgment creditor or reassign the remaining interest in the judgment to the original judgment creditor. The payment or reassignment to the original judgment creditor shall not subject the fund to further liability for payment to the original judgment creditor based on that transaction or judgment. Any costs incurred by the commission's attempting to collect assigned judgments shall be paid from the fund.

(i) The failure of an aggrieved person to comply with all of the provisions of this Code section shall constitute a waiver of any rights under this Code section.

~~(j) The commission, in its discretion, may use any and all funds, in excess of the amount of \$100,000.00 required by subsection (b) of this Code section, regardless of whether such funds are from the auctioneers education, research, and recovery fund or from accrued interest thereon for the purpose of helping to underwrite the cost of education and research programs for the benefit of licensees and the public as the commission may approve in accordance with the provisions of this chapter and its rules and regulations; provided, however, that the commission shall not expend or commit sums for educational or research purposes in such amounts as would cause the auctioneers education, research, and recovery fund to be reduced to an amount less than \$100,000.00~~ Reserved.

(k) In addition to the license fees provided for in this chapter, the commission, in its discretion and based upon the need to ensure that ~~a minimum~~ an appropriate balance, not to exceed of \$100,000.00, is maintained in the auctioneers education, research, and recovery fund, may assess each licensee, only upon renewal of his or her license, an amount not to exceed \$150.00 per year."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.